

BRUNSWICK COUNTY
REQUEST FOR
QUALIFICATIONS

**HEALTH & HUMAN SERVICES/
EMERGENCY OPERATIONS CENTER
DESIGN-BUILD TEAM**

ISSUE DATE: **June 26, 2024**

DUE DATE: **August 2, 2024 at 4:00 p.m. ET**



[BRUNSWICKCOUNTYNC.GOV/BID](https://www.brunswickcountync.gov/bid)

INTRODUCTION

To meet the growing demands of Brunswick County's Health and Human Services and Emergency Management departments, and to facilitate a more modern, efficient, and effective service delivery for its residents, Brunswick County, North Carolina (County) is soliciting and accepting Statements of Qualifications from interested and qualified firms to provide project management and design-build construction services for the construction of a new facility to include the County's Health, Human Services, and Emergency Management departments, as well as related surface parking lot and driveway improvements.

PROJECT SITE

The new facility will be constructed in the area south/southeast of the existing David R. Sandifer County Administration Building and Government Center Drive NE in the existing parking lot. The David R. Sandifer County Administration Building is located at 30 Government Center Drive NE, Bolivia, NC 28422.

PROJECT SCOPE OF WORK

The project consists of a new, multi-story facility (estimated at 95,000-100,000 square feet) to meet the needs of the Health Services, Social Services, Environmental Health, Public Housing, Veteran Affairs, Emergency Management, and Emergency Medical Services departments, including an Emergency Operations Center. The project will also include parking lot, pedestrian, driveway, and access improvements necessary to serve both new and existing facilities.

The project is also expected to provide the County with much needed flex space that can be used for staff training, meetings, conferences, vaccine clinics, emergency shelter, expanded Emergency Operation Center needs, and other non-permanent uses. Current expectations are for the Emergency Operations Center and Emergency Management and Emergency Medical Services staff to be located on the first floor of the facility, along with the large flex space that would be easily accessible by the public. The upper floors of the building will house the remaining office, laboratory, clinic, conference, storage, and public space needs for the Health, Social Services, Public Housing, Veteran Affairs, and Environmental Health Departments. Long-term space needs for each department have been identified through a Brunswick County Campus Master Plan that was completed in 2021. The design-build team may use the Campus Master Plan, along with the proposed building layout described within this Project Scope of Work as a guide, but may also develop their own recommendations based on their experiences with similar multi-use facility projects.

The building is expected to be constructed south/southeast of the current David R. Sandifer County Administration Building, utilizing area from existing parking lots and circulation streets within close proximity to active buildings and pedestrian crossings. It is vital that disruption of normal business operations be limited and carefully planned for during all phases of the project.

The project shall be inclusive of, but not limited to, site work, associated drainage/stormwater, sedimentation and erosion control, foundations, floors, walls, roofs, electrical, mechanical, and plumbing and all other necessary work for complete and functional building, driveways and parking lots.

The delivery method for this construction project will be design-build. The design-build contractor will be expected to fulfill the terms of the design-build contract through the delivery of a finished, fully usable, operational, and code compliant facilities that satisfy the County. The Scope of Work shall include, without limitation:

1. Facility Planning and Preliminary Design – The design-build team will provide resources needed to provide any additional planning and design information (i.e., geotechnical studies, surveying, testing, site visits, analyses, etc.). Brunswick County desires to work with the design-build team to develop a project scope that incorporates creativity and innovation relative to costs, schedule, and reliability.
2. Permitting – Currently, no permitting has been completed for the Project. The design-build team will provide the expertise and resources to determine all permitting needed and will work with Brunswick County and the applicable regulatory agencies to successfully obtain all required permits. The design-build team is expected to assist with the necessary testing during the commission and performance testing of the new facilities.
3. Detailed Design – The design-build team will provide the resources and expertise to complete the design of the new, multi-story facility that meets or exceeds all regulatory requirements, operations, and maintenance goals of the Project.
4. Construction – The design-build team must provide excellent construction expertise, management, and resources to complete the Project safely, on schedule, and within budget.
5. Project Management and Administration – The design-build team will provide resources and expertise on the administration and management of the Project to its final completion. This includes, but is not limited to, risk management, quality control, authority approvals and compliance, value engineering, and stakeholder engagement and communication.

In addition to the foregoing, the selected design-build team will be required to provide performance and payment bonds for 100% of the contract amount prior to construction.

The County will negotiate and refine the final Scope of Work with the selected design-build team. The selected design-build team will be required to work collaboratively with the designated County team and its delegates. The design-build team may be required to prepare further drawings, renderings, and other presentation materials for presentation of the Project. The County will provide all available information maintained by the County relative to the property records, easements, rights-of-way, and existing utilities.

PROJECT SCHEDULE

It is the intent of the County to have the Project complete in early 2026.

PROJECT BUDGET

The total budget for all design-build services for the aforementioned construction Project has not been established. Costs will include construction related expenses, architectural programming, design, preconstruction and construction related services, testing services, public jurisdiction fees and charges, and all professional service fees, costs, and expenses necessary to fully design, build, and deliver a fully complete and operational Project to the County.

STATEMENT OF QUALIFICATIONS CONTENT

Brunswick County invites all interested and qualified firms to submit qualifications statements in accordance with the following requirements. Responses should be prepared simply and economically, providing a straightforward and concise description of the firm's experience and qualifications related to the proposed Project scope. At a minimum, the following information is required to be included in the Statement of Qualifications.

- *Letter of Introduction*

- Provide a letter of introduction from the firm and identify any ideas, thoughts or concepts that differentiate your firm from the competition.

- *Relevant Experience and Capabilities:*

- Qualifications of the team members who will be assigned to the Project: The Project manager and other key team members should be clearly identified. If subcontractors are to be used for any portion of the work, they should be identified if known, and their qualifications included. Brunswick County reserves the right to reject any subcontractor in its sole and absolute discretion.
- The Statement of Qualifications shall clearly indicate who will oversee the Project as well as the roles that each individual shall perform.
- Special emphasis shall be provided on the individuals’ backgrounds, qualifications, certifications, experience on related and or similar projects, and experience of the team working together.
- Each design-builder must certify, in its response to this Request for Qualifications, that each design professional that is a member of the design-build team, including all subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by N.C.G.S. 143-64.31.
- After the award of the contract, the design-builder may not substitute any key personnel without obtaining written approval from Brunswick County.
- For projects that went forward to construction, please include the engineers’ probable cost of construction, the successful low bid for construction, and final costs (if available).

- *Schedule*

- A Project schedule including key milestones should be included. The Project schedule should start from the Notice to Proceed and include two-week review times for County staff reviews.

Event	Deadline
Advertise Design-Build RFQ	
Receive Statements of Qualifications (SOQ)	
Design-Builder Selection and Notification (2 weeks from SOQ)	
Execute Design-Build Agreement & Notice to Proceed (NTP) (up to 2 months from Selection – including BOC approval)	
60% Design Complete with GMP (180 days from NTP)	
Construction Complete (365 days from 60% design completion)	

- The County reserves the right to refine the Project schedule with the selected design-build team at any time after contract award.

- *Management Plan*

A brief description of the Project approach to be used by the design-build team should be included.

- In the design-builder's own words, 1) describe the understanding of the Project, 2) the requirements of the Project, 3) the challenges associated with the Project, 4) the approach to handling the Project challenges, and 5) the anticipated outcome of the Project.
- Describe the methodology and approach to design, permitting, and construction services.
- Type and amount of self-performed work that is anticipated.
- List all assumptions made in preparing the Project approach.
- Discuss any additions, deletions, or changes to the Scope of Work which may improve the Project. Discuss how these changes will affect the associated resources and schedule.

SELECTION CRITERIA

The County will review the submittals based on the criteria listed below:

1. The design-builder's understanding of the Project objectives, with specific emphasis on competent and cost-efficient design and construction of this type of facility.
2. The design-builder's ability to meet deadlines and deliver a Project within budget.
3. The design-builder's recommended approach to the Project, with an emphasis on limiting the impacts to existing operations of the County.
4. The design-builder's knowledge, demonstrated experience, organizational resources, and successful completion of design-build, with specific emphasis on local government facilities.
5. Qualifications of the key staff/partners identified to perform the work and their level of involvement in this specific Project.

Qualifications Selection Criteria	Qualifications Selection Criteria Weighting
	Max Points
The design-builder's understanding of the Project objectives and Scope of Work	25
The design-builder's ability to meet deadlines and deliver a quality project within budget	20
The design-builder's recommended approach to the Project	20
The design-builder's experience with successful completion of similar design-build projects	15
Qualifications of key individuals assigned to the Project	20
Total Points	100

An evaluation panel will review and score the responses. The panel will discuss the responses, compare the respondent's individual criteria, and rank the three (3) most highly qualified respondents based on the design-builder's demonstrated competence and qualifications, without regard to fee.

SUBMITTALS

Interested design-builders should submit a fully completed Statement of Qualifications as outlined herein no later than **4:00 p.m. ET on August 2, 2024**. Please provide four (4) bound copies and one (1) flash drive or other electronic copy, submitted to:

Haynes Brigman, Deputy County Manager
30 Government Center Drive NE
Post Office Box 249
Bolivia, NC 28422

Please limit overall submittals to a maximum of 25 pages, including cover and back pages (pages for required information such as resumes and organizational partners do not count towards the 25 page limit).

Brunswick County is not responsible for the failure of any mail or delivery service to deliver submittals prior to the stated date and time. Regardless of the manner of submittal, any response received after the stated date and time will not be considered. Incomplete responses or responses inconsistent with the required format will be disqualified from consideration.

The design-builder is required to have insurance as outlined in the Minimum Insurance Requirements attached hereto as Attachment 1 and incorporated herein by reference. The design-builder will be required to provide a Certificate of Insurance with its Statement of Qualifications as evidence that it meets the minimum requirements.

The design-builder is also required to have proper license(s) under the laws of the State of North Carolina governing their respective trades. Proof of licensure will be required with the response.

Pre-submittal Meeting: Tuesday, July 16, 2024, at 1:00 p.m. ET. Meeting will be held in the 2nd Floor Training Room of the David R. Sandifer Administration Building located at 30 Government Center Drive NE, Bolivia. Attendance via Zoom will also be made available for this meeting (link will be shared at a later date).

Questions: Any questions or requests for further information should be submitted by email to the following individuals prior to Friday, July 26 at 5:00 p.m. ET:

Haynes Brigman, Deputy County Manager
haynes.brigman@brunswickcountync.gov

William Pinnix, Engineering Director
william.pinnix@brunswickcountync.gov

A copy of all questions, answers, and/or further clarifications will be made in the form of an addendum to this Request for Qualifications, which will be posted to the County's website. Notwithstanding the foregoing, design-builders will be responsible for ensuring that they have all addenda. The County will not be responsible for notifying any parties. The County reserves the right to cancel this Request for Qualifications for any reason without any liability or to waive any irregularities at their discretion.

All Statements of Qualifications received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any proposal material deemed by the design-builder to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the design-builder. In

addition, it shall be the sole responsibility of the design-builder to demonstrate to a court of competent jurisdiction that the designation is proper pursuant to North Carolina General Statute 66-152. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. The design-builder hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties or expenses arising out of contractor's proprietary or trade secret designation.

The County reserves the right to obtain clarification of any point in a design-builder's submittal or to obtain additional information. The County also reserves the right to reject any and all Statements of Qualifications, or to accept any Statement of Qualifications that is deemed to be in the best interest of the County. The County reserves the right to waive technicalities and informalities, so long as the waiver does not render the submittal nonresponsive or in violation of Chapter 143 of the North Carolina General Statutes.

Brunswick County has implemented a Minority Business Policy that requires contractors to exhibit good faith efforts to contact minority business subcontractors who work on the Project would represent 10% of the total value of the work.

NOTE: The design-build team shall include in its Statement of Qualifications the minority business participation it will use on the Project (Identification of Minority Business Participation) and shall include either Affidavit A or Affidavit B as applicable. Forms and instructions are included herein.

The design-builder submitting a Statement of Qualifications hereby certifies that it has carefully examined this Request for Qualifications and all attachments hereto, that it understands and accepts all terms and conditions and the Scope of Work, and that it has knowledge and expertise to complete the Project.

Brunswick County will not be responsible for any costs or expenses incurred by any design-builder in submitting a response. Brunswick County reserves the right to cancel the work described herein prior to the issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

In addition to the terms and conditions contained in this Request for Qualifications, by submitting a response, if selected, the design-build team agrees to enter into and be bound by the provisions of Progressive Design-Build Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Qualifications and the terms of the Progressive Design-Build Agreement conflict, the terms of the Progressive Design-Build Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties.

The County will negotiate and refine a final Scope of Work with the selected design-builder. The design-builder's final contract shall be based on a lump sum amount, inclusive of permit application fees and other expenses (printing, mileage, per diem, etc.). No additional compensation shall be made for reimbursable items.



ATTACHMENT 1

BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

A. COMMERCIAL GENERAL LIABILITY

Covering all operations involved in this Agreement.

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Each Occurrence

\$1,000,000 Personal and Advertising Injury Limit

\$ 5,000 Medical Expense Limit

B. WORKERS' COMPENSATION

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000 Each Accident

\$500,000 Disease - Each Employee

\$500,000 Disease - Policy Limit

C. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 Combined Single Limit – Any Auto

D. PROFESSIONAL LIABILITY

\$1,000,000 Per Occurrence

E. POLLUTION LIABILITY INSURANCE

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS
ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- B. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- C. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- D. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- E. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- F. The Certificate of Insurance should note in the Description of Operations the following:

Department: Administration

Contract: # _____

- G. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- H. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- I. Certificate Holder shall be listed as follows:

ATTENTION: Brunswick County Risk Manager
30 Government Center Dr. NE
P.O. Box 249
Bolivia, NC 28422

- J. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

STATE OF NORTH CAROLINA

**PROGRESSIVE DESIGN-BUILD AGREEMENT
(STANDARD)**

COUNTY OF BRUNSWICK

THIS PROGRESSIVE DESIGN-BUILD AGREEMENT (the “Agreement” or “Contract”) is made as of the _____ day of _____, 202____, by and between the following parties, for services in connection with the Project identified below:

OWNER:

Brunswick County, a body politic and corporate of the State of North Carolina
30 Government Center Drive NE
P. O. Box 249
Bolivia, NC 28422

DESIGN-BUILDER:

(Name and address)

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

This Agreement shall be subject to and further governed by the applicable provisions of the Standard Form of General Conditions of Contract Between Owner and Design-Builder (DBIA Contract Document #535), as may be amended herein, which are incorporated by reference and as more fully set forth in Article 2 below, and any Supplementary General Conditions of Contract, as applicable, which shall be attached hereto as Exhibit D and incorporated herein by reference. In the event any provision between or among this Agreement conflicts with the provisions of the General Conditions of Contract and/or the Supplementary General Conditions of Contract, the order of precedence set forth in Article 2 below shall apply. Any capitalized terms not defined herein shall have the meanings ascribed to them in the General Conditions of Contract or Supplementary General Conditions of Contract.

Article 1

Design-Builder's Services and Responsibilities

1.1 General Services.

1.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

1.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

1.2 Phased Services.

Phase 1 Services. Design-Builder shall perform the services of design, pricing and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 1.3.

1.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum.

1.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

1.3.1.1 The Contract Price that may be based on a Lump Sum with an option for a GMP, which shall be the sum of:

Design-Builder's Fee as defined in Section 6.4.1 hereof;

The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.2 hereof; and

If applicable, any prices established under Section 6.1.3 hereof;

1.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Proposal;

1.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

1.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

1.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 If applicable, Performance Incentives;

1.3.1.11 The time limit for acceptance of the Proposal; and

1.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

1.3.2 Review and Adjustment to Proposal.

1.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

1.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

1.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i. Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.2 above; or
- ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 1.3.2.3 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.2.3 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If

Owner terminates the relationship with Design-Builder under Section 1.3.2.3iii, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 2

Contract Documents

2.1 The Contract Documents include, by order of precedence:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) (“General Conditions of Contract”);

2.1.2 The Contract Price Amendment referenced in Section 1.3.2.2 herein or the Proposal accepted by Owner in accordance with Section 1.3 herein;

2.1.3 This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

2.1.4 Supplementary General Conditions of Contract;

2.1.5 The General Conditions of Contract, as amended herein;

2.1.6 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

2.1.7 Exhibit B, Scope of Services; and

2.1.8 The following other documents, if any:

(List all additional documents or N/A)

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner’s acceptance of the Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. (Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 All work product created by Provider pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of County. County and Provider agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Provider hereby irrevocably assigns to County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon County's request, Provider shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in County. Provider forever waives any and all rights relating to original Work Product created pursuant to

this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

4.2 In the event the use of any of Provider's intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, Provider hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.

4.3 County may use Work Product for any other purpose and on any other project without additional compensation to Provider. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County's risk.

Article 5

Contract Time

5.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: (Insert any interim milestones ("Scheduled Interim Milestone Dates") for portions of the Work with different scheduled dates for Substantial Completion.)

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by (____) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner _____ Dollars (\$_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Design-Builder understands that if Final Completion is not achieved within ____ days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within _____ (____) days of Substantial Completion, Design-Builder shall pay to Owner _____ Dollars (\$_____), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

5.6 Owner's Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.6.1 Owner shall have a minimum of _____ days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.6.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within ____ days of receipt by Owner.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$_____) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services

compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum in the Contract Price Amendment.

6.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

6.2 Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$_____) ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.2 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.4 INTENTIONALLY DELETED

6.5 Cost of the Work.

6.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit ___ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch

offices shall include a _____ percent (_____%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

6.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.5.1.8 Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.5.1.10 Costs of removal of debris and waste from the Site.

6.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery,

equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

6.5.1.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.5.1.14 All fuel and utility costs incurred in the performance of the Work.

6.5.1.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.5.1.16 Legal costs, court costs and costs of mediation reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.5.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.5.1.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.5.1.20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.5.1.21 Accounting and data processing costs related to the Work.

6.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

6.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.1.1, 6.5.1.2 and 6.5.1.3 hereof.

6.5.2.2 Overhead and general expenses, except as provided for in Section 6.5.1 hereof, or which may be recoverable for changes to the Work.

6.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

6.6 INTENTIONALLY DELETED

6.7 Allowance Items and Allowance Values.

6.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

6.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advance authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

6.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

Article 7

Procedure for Payment

7.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *(Insert terms.)*

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the _____ (_____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's

Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.2.2 Owner shall make payment within thirty (30) after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Progress Payments.

7.3.1 Owner will retain five percent (5%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

7.3.2 Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

[If Owner and Design-Builder have established a warranty reserve pursuant to Section 6.5.1.23 above, the following provision should be included.]

If a warranty reserve has been established pursuant to Section 6.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 6.5.1.23 above.

7.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____ %) per month until paid.

7.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an “open book” arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner’s accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

Article 8

Termination for Convenience

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, and the parties have agreed to a payment to Design-Builder in the case of such termination of convenience, Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

or

Overhead and profit in the amount of _____ percent (_____ %) on the sum of items set forth in Section 11.6.1 of the General Conditions.

8.2 In addition to the amounts set forth in Section 8.1 above and Section 11.6.1 of the General Conditions, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

[The following Article 9 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

A Performance Bond is required.

A Payment Bond is required.

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

Required

Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

11.2 Governing Law and Venue. This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

11.3 Dispute Resolution. The parties hereto expressly agree that Section 10.3 of the General Conditions of Contract and any and all other references to arbitration shall be deleted in their entirety. In lieu thereof, should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

11.4 Governmental Immunity. Owner, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

11.5 Non-Appropriation. In addition to the termination provisions set forth in Article 11 of the General Conditions of Contract and notwithstanding anything to the contrary contained herein or in the General Conditions of Contract, if the Board of County Commissioners of Owner does not appropriate the funding needed by Owner to make payments under this Agreement for a given fiscal year, Owner will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, Owner will promptly notify the

Design-Builder of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by Owner which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

11.6 Independent Contractor. Owner and Design-Builder agree that Design-Builder shall act as an independent contractor and shall not represent itself as an agent or employee of Owner for any purpose in the performance of its duties under this Agreement. Owner shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Design-Builder shall not be entitled to participate in any plans, arrangements or distributions by Owner pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to Owner's employees.

11.7 Divestment from Companies that Boycott Israel. Design-Builder hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

11.8 Debarment. Design-Builder hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Design-Builder must notify Owner within thirty (30) days if debarred by any governmental entity during this Agreement.

11.9 Non-discrimination in Employment. Design-Builder shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Design-Builder shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Design-Builder is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by Owner, and Design-Builder may be declared ineligible for further agreements with Owner.

11.10 Minority Business Enterprises. Design-Builder will make a good faith effort to utilize Minority Business Enterprises (MBEs) per N.C.G.S. § 143-128 in the performance of this Agreement.

11.11 Compliance with E-Verify Program. Pursuant to N.C.G.S. § 143-133.3, Design-Builder understands that it is a requirement of this Agreement that Design-Builder and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Design-Builder agrees that, unless it is exempt by law, it shall verify the work

authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and it shall require its subcontractors to do the same. Upon request, Design-Builder agrees to provide Owner with an affidavit of compliance or exemption.

11.12 Confidential Information. In addition to the provisions set forth in Section 13.1 of the General Conditions of Contract, the parties agree that the restrictions regarding the use and disclosure of Confidential Information do not apply to information that is: (i) in the public domain through no fault of the receiving party; (ii) within the legitimate possession of the receiving party, with no confidentiality obligations to a third party; (iii) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; (iv) independently developed by the receiving party without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information; (v) disclosed with the prior written consent of the disclosing party; or (vi) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event the receiving party receives such a request, it shall notify the disclosing party, and the disclosing party shall have the opportunity to defend against production of such records at the disclosing party's sole expense.

11.13 Design-Builder Representations and Warranties. Notwithstanding anything to the contrary contained herein or in the General Conditions of Contract, Design-Builder represents and warrants that:

11.13.1 Design-Builder is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

11.13.2 Design-Builder has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

11.13.3 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Design-Builder to enter into and perform its obligations under this Agreement;

11.13.4 Design-Builder shall not violate any agreement with any third party by entering into or performing the services under this Agreement;

11.13.5 The services provided by Design-Builder under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);

11.13.6 Design-Builder shall ensure that whenever its employees or agents are on Owner's property, they will strictly abide by all instructions and directions issued by the Owner with respect to rules, regulations, policies and security procedures applicable to

work on Owner's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

11.14 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

Exhibit C – Minimum Insurance Requirements (as may be amended from time to time by Owner)

Exhibit D – Supplementary General Conditions of Contract

Exhibit E – Designer's Rate Sheet

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract"), as amended herein

Contract Price Amendment, if any.

Article 12

Limitation of Liability

12.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract or warranty (express or implied), shall not exceed _____percent (___%) of the Contract Price. The parties agree that specific consideration has been given by Design-Builder for this limitation and that it is deemed adequate.

Article 13

Execution

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing

electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

BRUNSWICK COUNTY

[DESIGN-BUILDER]

(Signature)

(Signature)

(Printed Name)

(Printed Name)

Chairman, Board of Commissioners

(Title)

(Title)

Date: _____

Date: _____

ATTEST:

Clerk to the Board

[SEAL]

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Bryan W. Batton, County Attorney /
Ryan S. King, Assistant County Attorney